seem that in pursuance of a more liberal policy, protection should have been granted to the defendant in this case on the ground that he was an attorney assisting in the administration of justice, and that his presence was necessary for that purpose,[26] just as it has been granted to a party in a similar situation.[27] The courts do not generally distinguish between attendance at a deposition and at a trial.[28]

ENJOINING SUITS IN FOREIGN JURISDICTIONS.—The power of a court of equity to enjoin a defendant within its jurisdiction from proceeding with an action in a foreign state was denied in the earliest reported case, apparently as an unwarranted interference with the proceedings of a foreign tribunal.[1] The error of this objection was, however, quickly recognized and it was declared that such an injunction was not a pretention to the exercise of judicial or administrative rights abroad but a mere exercise of control over the person of a resident.[2] Accordingly, the power of equity to issue such an injunction when a proper case is presented has long been a settled principle of English jurisprudence.[3] In the United States, though this power is rarely invoked to restrain proceedings in the courts of a foreign nation, the same principles are applicable between sister states,[4] it being held that the decree of a court of one state restraining a defendant from the further prosecution of proceedings initiated in another, does not fail to give to those proceedings the "full faith and credit" afforded to them by the laws of the latter state.[5]

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[26]Central Trust Co. *v.* Milwaukee St. Ry., *supra.*

[27]Parker *v.* Marco, *supra;* Larned *v.* Griffin, *supra;* see Roschynialski *v.* Hale, *supra,* which expressly repudiates the doctrine of Greer *v.* Young, *supra,* on which Nelson *v.* McNulty, *supra,* is based.

[28]See notes 12, 13, 27, *supra.*

[1]Lowe *v.* Baker (1692) 6 Freem. 125, reported more fully as Love *v.* Baker, 1 Ch. Cas. *67, where *cf.* the reporter's remark: *"Sed quaere,* for all the Bar was of another Opinion".

[2]Portarlington *v.* Soulby (1834) 3 Myl. & K. 104; Busby *v.* Munday (1821) 5 Madd. 297.

[3]Story, Eq. Jur. § 900; M'Intosh *v.* Ogilvie (1747) 3 Swanst. 365, n.; Beauchamp *v.* Marquis of Huntley (1822) Jac. 546. The power is dependent solely on the defendant's being within reach of the court's process. It is not affected by the fact that the property which is the subject matter of the controversy is located in the foreign country. Bunbury *v.* Bunbury (1839) 1 Beav. *318; Beckford *v.* Kemble (1822) 1 Sim. & Stu. 7.

[4]Dehon *v.* Foster (1862) 86 Mass. 545; Angle *v.* Scheuerman (1869) 40 Ga. 206; Miller *v.* Gittings (1897) 85 Md. 601, 37 Atl. 372; and cases *infra.* The doctrine was formerly enunciated by New York courts of chancery that considerations of interstate comity forbade the issuance of an injunction whenever proceedings had been previously commenced in the courts of another state. See Mead *v.* Merritt (1831) 2 Paige, 402; Williams *v.* Ayrault (1860) 31 Barb. 364. This position was abandoned by later New York cases, which allowed the enjoining of a defendant, though in active prosecution of a foreign suit, whenever a "special case" was presented justifying equitable intervention. Vail *v.* Knapp (1867) 49 Barb. 299; Claflin & Co. *v.* Hamlin (1881) 62 How. Pr. 284; Kittle *v.* Kittle (1878) 8 Daly, 72.

[5]Cole *v.* Cunningham (1890) 133 U. S. 107, 10 Sup. Ct. 269. Three judges dissented on the ground that the exercise of the power was unconstitutional.

But conceding that such an injunction is within the power of a court of equity, the question remains as to when the power will be exercised. Ordinarily a resident of one state has a right to go into the courts of another jurisdiction to secure such relief as may there be available to him, and the mere convenience or preference of the defendant to be sued in the courts of their common residence will not enable him to enjoin his adversary from proceeding in others.[6] If, however, the foreign tribunal cannot afford the parties a complete adjudication of their cause, or the full and adequate justice that is to be obtained in the courts of their residence, the injunction will issue.[7] When a suit is already pending, whether the parties are of the same domicil or not, and one of them begins or threatens to begin in a foreign jurisdiction another suit against his adversary involving the same subject matter, the better view is that if full and complete relief is obtainable in the former action, he will be enjoined from instituting or proceeding with the foreign suit.[8] This is always so where he apparently brings the foreign suit with the malicious object of harrassing the petitioner[9] or of obtaining some unconscionable advantage over him.[10]

Injunctions of the type under consideration are most frequently granted to restrain a person from proceeding in the courts of another state or nation for the purpose of evading the laws of the jurisdiction of which both he and the defendant are residents.[11] The principle

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[6]Wade *v.* Crump (Tex. Civ. App. 1915) 173 S. W. 538; Edgell *v.* Clarke (1897) 19 App. Div. 199, 45 N. Y. Supp. 979; Wyeth Mfg. Co. *v.* Lang (1893) 54 Mo. App. 147. The fact that suit has already been commenced in the foreign court may itself be a reason for denying the injunction on the ground that of two equally competent courts, that which first obtains jurisdiction will retain it. Freick *v.* Hinkley (1913) 122 Minn. 24, 141 N. W. 1096.

[7]Busby *v.* Munday, *supra*; Ainslie *v.* Sims (1854) 23 L. J. Ch. 161; Bunbury *v.* Bunbury, *supra*; *cf.* Monumental Savings Ass'n. *v.* Fentress (C. C. 1903) 125 Fed. 812.

[8]United Cigarette Machine Co. *v.* Wright (C. C. 1907) 156 Fed. 244; Field *v.* Holbrook (N. Y. 1856) 3 Abb. Pr. 377; see *contra,* Ambursen Const. Co. *v.* Northern Const. Co. (1913) 140 Ga. 1, 78 S. E. 340; Jones *v.* Hughes (1912) 156 Iowa, 684, 137 N. W. 1023. In England, while the foreign suit will be enjoined if a decree has previously issued in the local court on the same subject matter, Harrison *v.* Gurney (1821) 2 Jac. & W. 563; Wedderburn *v.* Wedderburn (1840) 2 Beav. *208, if such is not the case, the party seeking the injunction must show that the foreign action is actually vexatious. McHenry *v.* Lewis (1882) 22 Ch. D. 397; Hyman *v.* Helm (1882) 24 Ch. D. 531.

[9]Commercial Acetylene Co. *v.* Avery Lighting Co. (C. C. 1906) 152 Fed. 642, aff'd. (7 C. C. A. 1908) 159 Fed. 935; Gordon *v.* Munn (1910) 81 Kan. 537, 106 Pac. 286.

[10]Locomobile Co. *v.* American Bridge Co. (1903) 80 App. Div. 44, 80 N. Y. Supp. 288; Kittle *v.* Kittle, *supra.*

[11]Portarlington *v.* Soulby, *supra*; Dinsmore *v.* Neresheimer (N. Y. 1884) 32 Hun, 204; Sandage *v.* Studebaker Co. (1895) 142 Ind. 148, 41 N. E. 380. If the foreign suit necessarily results in an evasion of the laws of the parties' domicil the intent to evade them will be presumed. Keyser *v.* Rice (1877) 47 Md. 203; Wierse *v.* Thomas (1907) 145 N. C. 261, 59 S. E. 58. But the mere gaining of an advantage in respect to a rule of evidence, Edgell *v.* Clarke, *supra,* or the fact that there may be reason to anticipate a difference of opinion between courts regarding the merits of the controversy, Carson *v.* Dunham (1889) 149 Mass. 52, 20 N. E. 312, will not be ground for an injunction.

on which such an injunction issues is that citizens of a state are bound by its laws and cannot be permitted so to act as to evade or counteract their operation with the result of depriving other citizens of rights which those laws were intended to secure.[12] Thus, where a debtor and creditor are residents of one state and the creditor goes into another state to garnish credits[13] or attach chattels[14] of his debtor there which are exempt under the laws of their common domicil, he may invariably be enjoined. On the same principle, an injunction may issue restraining the creditor of an insolvent against whom bankruptcy proceedings have issued or are about to issue, from evading the insolvency laws of the state of his and his debtor's residence and securing a preference by attaching in another jurisdiction property or credits of the insolvent located there.[15] But as the equitable jurisdiction in these cases arises from an unconscionable attempt to evade the laws of the parties' common domicil, an injunction will not issue unless the plaintiff and defendant are residents of the same state.[16] In the recent case of *Federal Trust Co.* v. *Conklin* (N. J. 1916) 99 Atl. 109, the defendant, a resident of New Jersey, had attached in New York, as assignee of a New York insolvent, a fund of the plaintiff, a New Jersey corporation. The plaintiff sought an injunction, on the ground that under the laws of New Jersey it had an equitable set-off to the insolvent's claim, which the New York courts might not recognize. But the court refused to intervene, on the ground that the defendant, though personally a resident of New Jersey, was as assignee officially domiciled in New York, and the proceedings did not therefore constitute an attempt to evade the laws of New Jersey.

THE EFFECT OF FAILURE OF PRIOR GIFTS ON SUCCEEDING CONTINGENT DEVISES.—It is well established that, on any failure[1] of a particular estate unprovided for, a vested remainder expectant thereon is accelerated to take possession at once.[2] But there is more difficulty in regard to the status of a devise conditioned on a contingency. It is clear that a conditional devisee may sometimes take without the occurrence

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[12]Kelly *v.* Siefert (1897) 71 Mo. App. 143, 147; see Wyeth Mfg. Co. *v.* Lang, *supra,* at p. 151.

[13]Allen *v.* Buchanan (1892) 97 Ala. 399, 11 So. 777; Keyser *v.* Rice, *supra*; Zimmerman *v.* Franke (1886) 34 Kan. 650, 9 Pac. 747. Exemption laws, being a part of the *lex fori,* will not, except by statute, avail a debtor in proceedings brought in a foreign state. 2 Freeman, Executions, § 209.

[14]Mumper *v.* Wilson (1887) 72 Iowa, 163, 33 N. W. 449; Stewart *v.* Thomson (1895) 97 Ky. 575, 31 S. W. 133.

[15]Dehon *v.* Foster, *supra*; Hazen *v.* Lydonville Bank (1898) 70 Vt. 543, 41 Atl. 1046. But where the foreign property of the insolvent could not pass to his assignee under the laws of the jurisdiction where it was located, see 16 Columbia Law Rev. 145, such an injunction was refused. Warner *v.* Jaffrey (1884) 96 N. Y. 248.

[16]Griffith *v.* Langsdale (1890) 53 Ark. 71, 13 S. W. 733.

[1]The cause of the failure, whether incapacity or unwillingness of the particular tenant to take, is immaterial so far as the rights of subsequent devisees are concerned, as it in no way affects the condition imposed on their taking. It is important only if these further limitations fail, as determining whether the devise is void or lapsed, and consequently whether the heirs or the residuary devisees take.

[2]1 Jarman, Wills (6th ed.) 718.